

APPENDIX "C"

LOCAL RULES FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

(a) Duties Under 28 U.S.C. §636(a)

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. §636(a), and may

(1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure.

(2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. §3146, and take acknowledgments, affidavits and depositions; and

(3) Conduct extradition proceedings, in accordance with 18 U.S.C. §3184.

(b) Disposition of Misdemeanor Cases --18 U.S.C. §3401. A magistrate judge may

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. §3401;

(2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

(3) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(c) Determination of Non-Dispositive Pretrial Matters--28 U.S.C. §636(b)(1)(A).

A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection 1(d), infra, of these rules.

(d) Recommendations Regarding Case-Dispositive Motions--28 U.S.C. §636(b)(1)(B).

(1) A magistrate judge may submit to a judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:

- A. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
- B. Motions for judgment on the pleadings;
- C. Motions for summary judgment;
- D. Motions to dismiss or permit the maintenance of a class action;
- E. Motions to dismiss for failure to state a claim upon which relief may be granted;
- F. Motions to involuntarily dismiss an action;
- G. Motions for review of default judgments;
- H. Motions to dismiss or quash an indictment or information made by a defendant; and
- I. Motions to suppress evidence in a criminal case.

(2) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases under 28 U.S.C §§2254 and 2255.

A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under §2254 and §2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may be made only by a judge.

(f) Prisoner Cases under 42 U.S.C. §1983 and 28 U.S.C. §2241.

A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners pursuant to 42 U.S.C. §1983 and 28 U.S.C §2241.

(g) Special Master References.

A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. §636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) Review of Administrative Agency Proceedings.

In a suit for judicial review of a final decision of an administrative agency, a magistrate judge may be designated by a judge to review the record of administrative proceedings and submit to the district judge a report and recommendation concerning (a) any defects in the agency proceedings which constitute a violation of statute or regulation or a violation of due process, (b) whether the matter should be remanded to the agency for additional factual determinations, and (c) whether the record contains substantial evidence in support of the agency decision.

(i) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. §636(c).

Upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

(j) Other Duties.

A magistrate judge is also authorized to

(1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(3) Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(4) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

(5) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

- (6) Accept petit jury verdicts in the absence of a judge;
- (7) Conduct necessary proceedings leading to the potential revocation of misdemeanor probation and revocation of felony or misdemeanor supervised release;
- (8) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (9) Order the exoneration or forfeiture of bonds;
- (10) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. §1484(d);
- (11) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;
- (12) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;
- (13) Perform the functions specified in 18 U.S.C. §4107, 4108, 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (14) Preside over a naturalization ceremony and administer the oath required by 8 U.S.C. §1448(a);
- (15) Supervise proceedings on requests for letters rogatory in civil and criminal cases if designated by a district judge under 28 U.S.C. §1782(a);
- (16) Serve as a member of the district's Speedy Trial Act Planning Group, 18 U.S.C. §3168;
- (17) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;
- (18) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States;

(19) Issue orders authorizing the installation and use of pen registers, traps and traces, and issue orders directing a communications common carrier, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers.

(20) Conduct reaffirmation hearings pursuant to Title 11, U.S.C. 524 (c) and (d) and to approve/disapprove the reaffirmation agreements at such hearings and conduct Chapter 13 plan confirmation hearings in all cases unless objections have been filed.

RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) General.

The method of assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a judge.

(b) Misdemeanor Cases.

All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. §3401 and Rule 58, Federal Rules of Criminal Procedure.

RULE 3. PROCEDURE BEFORE THE MAGISTRATE JUDGE

(a) In General

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the local rules of this court, and to the requirements specified in any order of reference from a judge.

(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties -- 28 U.S.C. §636(c).

(1) Notice.

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his/her representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) Execution of Consent

The parties may sign separate consent forms; however, consent forms signed by all the parties or their representatives will also be accepted. The consent forms should be sent to the clerk of court. Unless all parties have consented to the reference, the decision of each party as indicated on the consent forms shall not be made known to any judge or magistrate judge. No magistrate judge, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they have the option of referring a case to a magistrate judge.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a judge had presided.

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-Dispositive Matters--28 U.S.C. §636(b) (1)(A).

Any party may appeal from a magistrate judge's order determining a motion or matter under subsection 1(c) of these rules, *supra*, within 10 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

(b) Review of Case-Dispositive Motions and Prisoner Litigation--28 U.S.C. § 636(b)(1)(B).

Any party may object to a magistrate judge's proposed findings, recommendations or report under subsections 1(d), (e), (f), and (h) of these rules, supra, within 10 days after being served with a copy thereof. The clerk of court shall notify the parties of this right when serving copies of the report. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his/her discretion or where required by law, and may consider the record developed before the magistrate judge, making his/her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

(c) Special Master Reports--28 U.S.C. §636(b)(2).

Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Misdemeanor Cases--18 U.S.C. §3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal to the District Court within 10 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court of the court of appeals.

(e) Appeal from Judgments in Civil Cases Disposed of on consent of the Parties--28 U.S.C. § 636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. §636(c) and subsection 1(i) of these rules, supra, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

(2) Appeal to a District Judge.

A. Notice of Appeal.

In accordance with 28 U.S.C. §633(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a judge of this court, rather than directly to the court of appeals. In such case the appeal shall be taken by filing a notice of appeal with the clerk of court within 30 days after entry of the magistrate judge's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of judgment. For good cause shown, the magistrate judge or a judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

B. Service of the Notice of Appeal.

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel, to the party at his last known address.

C. Record on Appeal.

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. §636(c)(4).

D. Memoranda.

The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his/her memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

E. Disposition of the Appeal by a Judge.

The judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the district court to the court of appeals and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate judge's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate judge to judge the credibility of the witnesses.

(f) Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by a governing statute, rule, or decisional law.

ADDENDUM
General Order of July 17, 1981

ON THIS DATE came on to be considered those causes in which Plaintiff, pursuant to 42U.S.C. § 405(g) and 5 U.S.C. §§ 701 et seq., seeks review of a decision by the Secretary of the Department of Health and Human Services upon an application for benefits under Title 42, Chapter 7, Subchapter II, United States Code, and

In accordance with the authority vested in the United States Magistrate Judge pursuant to the Amended Order for the Adoption of Rules for the exercise of Powers and Performance of Duties by United States Magistrate Judges, adopted in the Western District of Texas on April 17, 1980.

IT IS HEREBY ORDERED that all matters in which Plaintiff, pursuant to 42 U.S.C. § 405(g) and 5 U.S.C. §§ 701 et seq., seeks review of a decision by the Secretary of the Department of Health and Human Services upon an application for benefits under Title 42, Chapter 7, Subchapter II, United States Code, be referred by the Clerk to the United States Magistrate Judges sitting in the San Antonio Division in accordance with a random assignment procedure approved by the judges residing in the San Antonio Division.

IT IS FURTHER ORDERED that the United States Magistrate Judge is authorized to issue all orders necessary to his/her review, and that, upon completion of his/her review, he/she shall prepare a recommendation to the Court concerning the adjudication of these causes.